UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

COMAU, INC.

Employer

and **Case 7-RD-3644**

WILLIE RUSHING, An Individual

Petitioner

and

AUTOMATED SYSTEMS WORKERS LOCAL 1123, A DIVISION OF MICHIGAN REGIONAL COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Union

and

COMAU EMPLOYEES ASSOCIATION (CEA)

Intervenor

APPEARANCES:
Thomas J. Kienbaum, of Birmingham, Michigan, for the Employer.
Edward J. Pasternak, of Southfield, Michigan, for the Union.
Willie Rushing, of Detroit, Michigan, Pro se.

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer[1] of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

[1] An administrative law judge was the hearing officer as noted hereinafter.

Upon the entire record in this proceeding[2], the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Procedural history and overview

On April 14, 2009, the Petitioner filed the instant petition seeking to decertify the Union as the exclusive collective bargaining representative of certain of the Employer's employees.

On August 28, 2009, the undersigned issued an Order Consolidating Cases, Complaint and Notice of Hearing in Cases 7-CA-52106 and 7-RD-3644 for a hearing before an administrative law judge. The complaint alleged that the Employer violated Section 8(a)(5) and (1) of the Act by, inter alia, implementing Article 10 of a document entitled Imposed Last Best Offer, and thereby changing the employees' hospitalization, medical, dental, and vision care benefits without obtaining the Union's consent and without first bargaining with the Union to a good-faith impasse. The Notice of Hearing directed a hearing on the issue of any causal connection between the Employer's alleged unfair labor practices and the decertification petition. Following the hearing, the cases were severed and the instant case was remanded to the undersigned for appropriate disposition in accordance with ***St. Gobain Abrasives, Inc.,*** 342 NLRB 434 (2004), and pursuant to Section 102.64 through 102.67 of the Board's Rules and Regulations.

On May 20, 2010, the administrative law judge issued his decision in Case 7-CA-52106, and on November 5, 2010, the Board issued its decision and order, ***Comau, Inc.***, 356 NLRB No. 21. Affirming the administrative law judge, the Board found that the Employer violated Section 8(a)(5) and (1) of the Act by unilaterally implementing a new health insurance plan in the absence of an agreement or a bona fide impasse.

Applying the causation test factors set forth in ***Master Slack***, 271 NLRB 78, 84 (1984), I find that there is a close temporal proximity between the Employer's unlawful

[2] The Employer, Union, and Intervenor filed briefs, which were carefully considered.

conduct and the filing of the petition: the Employer's unilateral implementation of changes to employees' healthcare benefits are the type of unlawful acts which have a detrimental and long lasting effect on employee support for the Union, had a tendency to cause employee disaffection from the Union, and had an effect on employee morale and caused the employees' disaffection from the Union. Under these circumstances, I conclude that a causal relationship exists between the Employer's unilateral changes and employee disaffection, and that the petition should be dismissed.

Background

The Employer, a division of the Fiat automobile company, builds assembly lines and specialty tools for the automobile industry. Since at least 2001, the Automated Systems Workers (ASW) has represented a bargaining unit of all full-time and regular part-time production and maintenance employees, inspectors, and field service employees, employed by the Employer at and out of its facilities located at 20950, 21000, and 21175 Telegraph Road, Southfield, Michigan, and 42850 West Ten Mile Road, Novi, Michigan, and machinists currently working at its 44000 Grand River, Novi, Michigan, facility who formerly worked at its facility located at 21175 Telegraph Road, Southfield, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.[3] In about March 2007, the ASW affiliated with the Michigan Regional Council of Carpenters (MRCC), United Brotherhood of Carpenters and Joiners of America, becoming ASW Local 1123, a division of the MRCC (the Union herein). At this time, the unit employees' union dues deductions increased, with a portion of these dues going to the ASW and the remainder going to the MRCC.

The most recent collective bargaining agreement between the Union and the Employer was effective by its terms from March 7, 2005, until March 2, 2008. Prior to the expiration date, the parties entered into an agreement that extended the effective period of the contract indefinitely, and gave either party the right to cancel the extension with 14 days notice. The parties commenced negotiations for a successor contract in January 2008, meeting more than 20 times in 2008, and continued to negotiate through March 20, 2009.

The Employer's Unfair Labor Practices found in Case 7-CA-52106

Early in the 2008-2009 negotiations with the Union, the Employer stated that the new contract would have to be concessionary and that it would not provide the employees

[3] The bargaining unit was established by 1961. Although it is unclear whether the ASW was the bargaining representative prior to 1981, it appears that before either ASW or the Union represented the unit employees, they were represented by an independent employee organization known as the Pico Employees Association (PEA).

with anything that increased Employer costs unless the employees provided the Employer savings in return. Among the major concessions sought by the Employer were reductions in the employees' healthcare benefits (including hospitalization, medical treatment, dental care, and vision care benefits). Under the extant collective bargaining agreement, unit employees were not required to pay any premiums for their Employer-provided healthcare coverage. Although the Employer used a "self-insured" health plan, the coverage was provided through Blue Cross/Blue Shield (Blue Cross). The Employer proposed that it would remain self-insured and continue to provide medical insurance through Blue Cross, but the unit employees would be required to pay health insurance premiums and their actual coverage would be reduced in some respects. The amount of the employee premium contributions under the Employer's December 3, 2008, last best offer would be significant, ranging between $57.28 to $453.05 per month, depending on the level of benefits chosen, the type of coverage (individual, two-person, or family), and the extent of cost increases during the term of the contract. The employees could also pay an additional $321.04 to $507.26 per month to obtain coverage for a child between 19 and 25 years of age.

The healthcare insurance became a sticking point between the parties and at the December 3, 2008, bargaining session, the Employer declared that the parties were at impasse, gave 14 days notice that it was canceling the contract extension, and stated that it would impose its last best offer on December 22 when the contract extension ceased to apply. The Employer informed the Union that despite its above actions, it was prepared to continue negotiations in order to reach a successor contract. Also on December 3, the Employer, in writing, and thereafter in meetings held from January 23 to 31, 2009, notified employees that, effective March 1, 2009, it would no longer offer the existing healthcare plan, but would instead offer healthcare coverage through another plan, requiring employee contributions towards the premium.[4] The Union also held meetings with employees after the Employer's December 3 announcement regarding the implementation of the last best offer to discuss the new healthcare plan. In this regard, the Union assisted the Employer as well as employees in readying the paperwork necessary for employees to receive benefits under the new healthcare plan.

The parties met on approximately 10 occasions for negotiations regarding health insurance between December 8, 2008, and continuing through March 20, 2009. On March 1, having not reached any agreement with the Union regarding healthcare, the Employer discontinued the existing healthcare plan, and switched unit employees to a new healthcare plan, including payroll deduction for the employees' share of the premium.

Under the above facts, the administrative law judge found that the Employer violated Section 8(a)(5) and (1) of the Act by unilaterally implementing a new health

[4] The imposed last best offer contained a notation that the new medical plan would be effective on March 1, 2009.

insurance plan in the absence of an agreement or a bona fide impasse. As noted, the Board affirmed this finding.

The Decertification Petition

According to Petitioner Willie Rushing, he began talking with another employee about decertification in fall 2008 because they were not happy with events occurring following the 2007 merger of the ASW and MRCC, including increased union dues and the Union's failure to follow through on promises to assist laid-off employees in securing other employment. Although the record is unclear as to a specific date, a "standing committee" comprised of unit employees was thereafter formed to solicit signatures for and file the petition. Harry Yale, a unit employee and member of the standing committee, as well as a member of the Union's bargaining committee, testified that as a result of talking to an information officer at the NLRB Regional Office, the Comau Employees Association (CEA) was formed around this time to ensure that employees would not be left without union representation following a decertification election. The standing committee did not begin soliciting signatures for the decertification petition until February 19, 2009.

Employees Felix Nash, Thomas Kalenick, Joseph Yoerg, Randall Nance, William Filbey, and Lacey Mathis each testified that he signed the decertification petition because he was unhappy with the Employer's imposed contract as stated in its December 3 last best offer, primarily including prospective deductions for premiums for the new healthcare plan.[5] As stated above, the Employer notified employees on December 3, 2008, as well as in meetings held thereafter in January 2009 that, effective March 1, 2009, it would no longer offer the existing health insurance plan, but would instead offer healthcare coverage through a plan requiring premium contributions from employees. The Union also held meetings with employees after December 3 to discuss the terms of the Employer's new healthcare plan, including the amount of prospective deductions from employees' paychecks for their premium contributions. Union vice-president Daniel Malloy testified that about January 2009, employees were advised of the specific amount of their premium contribution and started completing the paperwork necessary to receive coverage under the new plan. Employees also began complaining to the Union about healthcare costs being incurred for the first time ever. Malloy testified that after the first premium deduction in March, employee discontent reached a crescendo and he was "hit" with numerous angry phone calls from employees complaining about healthcare costs. Union recording secretary David Baloga also testified that the

[5] Nash, Kalenick, and Filbey also each testified that he signed the petition, in part, because he was unhappy about paying increased union dues. Unit employees had been paying increased union dues since March 2007, resulting from the merger of the ASW and MRCC.

employees' decertification efforts were the result of the Employer's decision to change its healthcare plan.[6]

A total of 105 signatures was gathered to support the decertification petition: 71 signatures were collected from February 19 to February 27, and the remaining 34 signatures were collected from March 2 to March 10. The Petitioner filed the petition on April 14. The record is not clear with regard to the number of employees in the bargaining unit at the time the decertification petition was filed. On the petition, the number is listed as 204; a witness testified that there were approximately 237 employees in the unit.

Analysis

The Board will dismiss a representation petition, subject to reinstatement, where there is a concurrent unfair labor practice complaint alleging conduct that, if proven, (1) would interfere with employee free choice in an election, and (2) is inherently inconsistent with the petition itself. The Board considers conduct to be inconsistent with the petition if it taints the showing of interest, precludes a question concerning representation, or taints an incumbent union's subsequent loss of majority support. To determine whether a causal relationship exists between unfair labor practices and the subsequent expression of employee disaffection from an incumbent union, the Board has identified the following relevant factors: (1) the length of time between the unfair labor practices and the filing of the petition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union. ***Overnite Transportation Co.***, 333 NLRB 1392,1392-1393 (2001), citing ***Master Slack Corp.***, 271 NLRB 78, 84 (1984).

As to the first factor, the length of time between the unfair labor practices and the filing of the petition, the Board has found a close temporal proximity where an employer's unfair labor practices occurred prior to or simultaneously with the circulation of the petition. See ***The Hearst Corp.***, 281 NLRB 764, 764 (1986). See also ***Fruehauf Trailer Services***, 335 NLRB 393, 394 (2001) (Board found a close temporal proximity where a disaffection petition was presented to an employer in the midst of the employer's ongoing bad faith bargaining).

---

[6] In its brief, the Employer argues that the testimony of Baloga, as well as Malloy, should not be relied on as it was provided during the unfair labor practice portion of the hearing. The Intervenor also argues, in its brief, that the record in the instant matter consists only of the transcript beginning with page 521 and that the remainder of the transcript and exhibits are part of 7-CA-52106, and are not part of the instant record. However, as noted by the administrative law judge, some of the witness testimony pertinent to the instant case was provided during the course of the unfair labor practice case, and the undersigned is entitled to review the entire record of transcripts and exhibits in making a decision in the instant matter.

In the instant matter, the Employer discontinued the existing healthcare plan on March 1, 2009, and unilaterally implemented changes by switching unit employees to the new healthcare plan requiring them to make premium contributions, which they had never made before. Although the Employer's unlawful conduct occurred on March 1, employees were on notice as of December 3 that the Employer would no longer offer the existing health insurance plan as of March 1, but would instead offer lesser healthcare coverage requiring payroll deductions for employee premium contributions. In January 2009, employees attended meetings, during which they learned of the specific amount of their premium contributions and completed paperwork to ensure coverage under the new plan.

Employee signatures expressing disaffection and supporting the petition were collected within the two weeks before and the two weeks following the March 1 implementation date. The decertification petition itself was filed April 14, almost 6 weeks after the Employer unlawfully unilaterally implemented the new health care plan requiring employee premium contributions and about 24 days after the Employer and the Union ceased negotiations.

It is obvious that **learning** that they would no longer be receiving Employer-funded healthcare and would be required to pay significant premiums for lesser coverage, constituting virtual wage cuts, would have a detrimental effect on the employees and might cause them to support the decertification effort. Employees' anticipation of the devastating impact of the financial burden of the unlawfully implemented healthcare plan cannot be separated from the real-time impact of the change to the healthcare plan when it came to fruition on March 1.

I find that the employees' expression of dissatisfaction followed close on the heels of, and was contemporaneous with, the Employer's announcement of the pending implementation of its premium-based healthcare plan, and is inextricably intertwined with the March 1 unlawful implementation of that very plan. The Employer's actions are on a continuum which forecloses separating out its lawful conduct, the December 3 announcement and December 22 implementation of its last best offer, from the subsequent unlawful conduct implementing the previously announced changes to the health insurance coverage at a time when the parties had broken the impasse with respect to health insurance. On March 1 the Employer was no longer privileged to unilaterally implement the new healthcare plan. This detrimental action would suggest to the employees that the Union was ineffective as their representative, and would likely cause employee disaffection from the Union.

Contrary to the Employer's assertion, in its brief, that the record leaves no doubt that the petition was not initiated as a result of anything occurring on March 1, 2009, I find that the record leaves no doubt that the petition was initiated as a result of anything other than what occurred on March 1. Moreover, the Employer and Intervenor

acknowledge in their briefs that employee disaffection toward the Union may well have resulted from the Employer's December 2008 announcement that the healthcare plan would be changing on March 1, 2009, and from additional information that employees obtained during the enrollment process in January 2009. The Employer's unlawful conduct and the collection of signatures and filing of the decertification petition indicate a strong nexus to the employee disaffection expressed in the petition. Moreover, the petition was not filed until April 14, after the implementation of the new healthcare plan. Therefore, I conclude that there is a close temporal proximity between the Employer's unlawful conduct and the circulation and filing of the petition.

As to the second factor, the nature of an employer's unlawful acts, including the possibility of their detrimental or lasting effect on employees, the Board has found that unilateral changes like those here graphically portray to employees that the employer is in a position to confer or withdraw economic benefits without regard to the presence of the union. Such a failure by an employer "to accord to the Union its rightful role to negotiate such programs for the employees necessarily tend[s] to undermine the Union's authority among the employees...with erosion of majority status the probable result." ***Guerdon Industries, Inc.***, 218 NLRB 658, 661 (1975). Thus, the Board has held that unilateral changes to wages and benefits are of "such a character as to either affect the Union's status, cause employee disaffection or improperly affect the bargaining relationship itself." Id. at 661. The possibility of a detrimental or long lasting effect on employee support of the union is clear where unlawful employer conduct shows employees that their union is irrelevant in preserving or increasing their wages and benefits. ***M & M Automotive, Group, Inc.***, 342 NLRB 1244, 1247 (2004); ***Penn Tank Lines***, 336 NLRB 1066, 1067 (2001).

In the instant case, the Employer notified employees as of December 3 that it would no longer offer the existing health insurance plans, and thereafter on March 1 it unilaterally implemented a new health insurance plan requiring, for the first time, employee premium contributions, doing so in the absence of an agreement or a bona fide impasse. The Employer's unilateral implementation involved rising healthcare costs and payroll deductions to cover employee premium contributions, the important bread-and-butter issues which typically motivate employees to seek and obtain union representation. See, ***M & M Automotive, Group, Inc.***, supra at 1247. The nature of the Employer's unlawful conduct was of a type to invite employee unrest and disaffection from a union, particularly given that the changes affected all employees, and sent a message to employees that the Union was irrelevant in preserving their healthcare benefits. Id. Compare, e.g., ***Lexus of Concord, Inc.***, 343 NLRB 851 (2004) (single employee transfer did not have detrimental or long lasting effect on employees); ***Champion Home Builders Co.***, 350 NLRB 788 (2007) (nature of the violations did not support a finding of taint because employer's confiscation of union materials from an employee workstation and a supervisor's threat to an employee were isolated events involving one employee each). I conclude that the Employer's changes to health benefits, including the requirement of

employee premium payments without the Union's consent and in the absence of a bona fide impasse are the type of unlawful acts which have a detrimental and long lasting effect on employee support for the Union.

As to the third factor, any possible tendency to cause employee disaffection from the union, the Employer's unilateral implementation of changes to employees' healthcare benefits to require employee premium payments, which in effect constituted a wage reduction, clearly had a tendency to cause employee disaffection. The Board has held that finding an employer's unfair labor practices caused employee disaffection "is not predicated on a finding of actual coercive effect, but rather on the tendency of such conduct to interfere with the free exercise of employee rights under the Act." ***Hearst Corp.***, supra at 765. Further, the Board has held that the unilateral implementation of significant changes in terms and conditions of employment during negotiations has the tendency to undermine employees' confidence in the effectiveness of their selected collective-bargaining representative. ***Vincent Industrial Plastics, Inc.***, 328 NLRB 300, 302 (1999).

As to the fourth factor, the effect of the unlawful conduct on employee morale and membership in the union, there is direct evidence which establishes that the Employer's unfair labor practices caused the employees' disaffection from the Union. Employee testimony demonstrates that employees were well aware of the parties' contractual dispute regarding healthcare and considered it to be significant. Employees testified that they signed the decertification petition because they were not happy with the Employer's imposed contract, primarily including wage deductions for healthcare premiums for the new healthcare plan. There can be no question that the Employer's unlawful conduct contributed to the employees' disaffection.

Conclusion

Based on the foregoing and the record as a whole, I find that all four of the causation test factors set forth in ***Master Slack*** have been met: (1) there is a close temporal proximity between the Employer's unlawful conduct and the filing of the petition, (2) the Employer's unilateral implementation of changes to employees' terms and conditions of employment were the type of unlawful acts which have a detrimental and long lasting effect on employee support for the Union, (3) the Employer's unilateral changes to employees' benefits had a tendency to cause employee disaffection from the Union, and (4) the Employer's unlawful conduct had a detrimental effect on employee morale and membership in the Union. Under these circumstances, the weight of the evidence supports, and I conclude, that a causal relationship exists between the

employer's unlawful unilateral changes and employee disaffection, and will dismiss the petition.

ORDER

IT IS ORDERED that the petition is dismissed.

Dated at Detroit, Michigan, this 14th day of December 2010.

(SEAL)

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001**. This request must be received by the Board in Washington by **December 28, 2010**. The request may be filed electronically through **E-Gov** on the Board's website, **www.nlrb.gov**,[7] but may **not** be filed by facsimile.

[7] Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.

To file the request for review electronically, go to **www.nlrb.gov** and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, **www.nlrb.gov**.